

CITY OF LINCOLN/LANCASTER COUNTY

CONTRACT AWARD NOTIFICATION
SPECIFICATION NO.02-121
ANNUAL REQUIREMENTS FOR
PHARMACY SERVICES FOR LANCASTER MANOR

DATE: May 20, 2003

CONTRACT PERIOD: Nov, 2002 thru Oct.31, 2005

CONTRACTOR: PharMerica
12737 "Q" Street
Omaha, NE 68137

PURCHASING DIVISION
K-STREET COMPLEX
440 SOUTH 8TH STREET
LINCOLN, NEBRASKA 68508
(402) 441-7410

Company Representative: Elizabeth A. Crouchley
Telephone No.: 402/895-7133
FAX No.: 402/895-0559
E-Mail Address:

THE CITY/COUNTY'S SPECIFICATIONS AND THE CONTRACTOR'S ACCEPTED PROPOSAL AND PRICING SCHEDULES, NOW ON FILE IN THE OFFICE OF THE CITY CLERK AND/OR THE COUNTY CLERK, ARE ADOPTED BY REFERENCE AND ARE AS FULLY A PART OF THIS CONTRACT FOR THE ABOVE-NAMED COMMODITY AS IF REPEATED VERBATIM HEREIN.

AS PER BID AND SPECIFICATION 02-121
AND
ATTACHED CONTRACT

NO ACTION NEED BE TAKEN BY THE CONTRACTOR AT THIS TIME. ORDERS FOR MATERIAL WILL BE MADE AS NEEDED BY THE VARIOUS CITY/COUNTY DEPARTMENTS.

DEPARTMENTS REQUIRING CATALOGS AND/OR PRICING SCHEDULES SHALL NOTIFY THE CONTRACTOR DIRECTLY.

Ratified: 8/20/02
File #C-02-0381

C-02-0381

Original Contract to: Contractor
Public File
Lancaster Manor
City/County Purchasing Division

FILED

AUG 15 2002

LANCASTER COUNTY CLERK

CONTRACT DOCUMENTS

LANCASTER COUNTY

NEBRASKA

FOR

ANNUAL PHARMACY SERVICES PROVIDER
FOR LANCASTER MANOR

SPECIFICATION #02-121

CONTRACTOR: PharMerica, Omaha, NE

LANCASTER COUNTY, NEBRASKA

CONTRACT AGREEMENT

THIS CONTRACT, made and entered into this 20th day of Aug, 2002, by and between PharMerica, 12737 "Q" Street, Omaha, NE 68137 hereinafter called contractor, and the Lancaster County, Nebraska, hereinafter called the County.

WITNESS, that:

WHEREAS, the County has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published an advertisement for and in connection with said Work, to-wit:

Specification #02-121 for Pharmacy Services and related consulting services, supplies, equipment, and delivery thereof.

and,

WHEREAS, the Contractor, in response to such advertisement, has submitted to the County, in the manner and at the time specified, a sealed Proposal in accordance with the terms of said advertisement; and,

WHEREAS, the County, in the manner prescribed by law has publicly opened, read aloud, examined, and canvassed the Proposals submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the most responsible, responsive Proposer for the said Work for the sum or sums named in the Contractor's Proposal, a copy thereof being attached to and made a part of this Contract;

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the agreements herein contained, the Contractor and the County have agreed and hereby agree as follows:

1. AGREEMENT DOCUMENTS

1. The Agreement consists of this document and all other exhibits, specifications, supplementary conditions, offers, addenda, and other documents attached or referenced. It may also include amendments added in the future.

2. CONTRACTOR'S OBLIGATIONS

- 2.1 SERVICE DESCRIPTION. The Contractor will provide pharmacy and related services as described in the specifications (**see exhibit A**), and the Contractor's response dated May 25, 2002 (**see exhibit B**). All work shall be completed to the County's satisfaction.

- 2.2 The Contractor must obtain prior written approval from the County for any change in the scope of work that materially increases or decreases the cost of performance. In addition, the Contractor must perform all modified work according to the terms of this Agreement.
- 2.3 The County will not accept any claim for extra work or materials furnished unless the Contractor receives prior written authorization from the County.
 - 2.3.1 Compensation for pharmaceutical related consulting and reporting services outside the scope of the RFP shall be billed at **\$45 per hour as authorized by the County.**
 - 2.3.2 All work or materials furnished without County's prior written authorization are at the Contractor's own risk and expense.
- 2.4 Compensation for prescription and non-prescription items shall be in compliance with Nebraska Department of Public Welfare published fee schedule and shall not exceed the Medicare/Medicaid rates.
- 2.5 Contractor shall fill pharmacy orders daily (as described in the RFP Specification) and shall be on-call for emergency needs on a 24 hr., 365 day per year basis.
- 2.6 Facsimile machines and/or computer terminals to deliver pharmacy material shall be provided to the Manor at no cost and will not exceed the number of nursing stations established.
 - 2.6.1 All consumable supplies including toner/drum cartridges and paper shall be furnished by the County.
- 2.7 Contractor shall provide monthly inspections and reports for the Manor on pharmacy and related procedures and conduct monthly reviews of the services with Manor Personnel.
 - 2.7.1 All report functions listed in the RFP shall be performed by the Contractor's Consultant Pharmacists, including one (1) hour of drug destruction per month for the fee of **\$3.00 per occupied bed at the Manor per month.**
- 2.8 Contractor shall provide prescription medications in a mutually agreeable, unit dose dispenser with a tamper evident container which is impermeable to moisture and approved by the Nebraska Board of Examiners in Pharmacy.

3. COUNTY'S OBLIGATIONS

- 3.1 The County shall furnish one copy of data in it's possession pertinent to completion of the work. Upon request from the Contractor the County shall provide, within reason, any additional information necessary to perform the duties as outlined herein.

- 3.2 The County shall make information and data concerning policies, standards, criteria, and studies available for reproduction.
- 3.3 The County shall compensate the Contractor for pharmaceutical related consulting and reporting services as indicated in section 2 , items 2.3 and 2.7.

4. PAYMENTS

- 4.1 The County will pay the Contractor and the Contractor shall remit to the County for performance of services according to the specifications (**see Exhibit A**).
- 4.2 The County will make payments within 30 calendar days from the date the Contractor submits invoices and claims.
 - 4.2.1 An estimate and progress report for work completed through the last day of the preceding calendar month shall accompany all requests for payment.
- 4.3 The Contractor may not make any charge or claim for damages that result from delays or hindrances beyond the County's control.
 - 4.3.1 The sole form of compensation for delay or hindrances is a reasonable extension of time agreed to by the parties.
 - 4.3.2 An extension is not a waiver of any of the County's legal rights.
- 4.4 All documents the Contractor presents to the County under this agreement are the County's permanent property.
 - 4.4.1 The Contractor must deliver all required reports before the County will make final payment.

5. CONFIDENTIALITY

- 5.1 If and to the extent, and so long as, required by the provisions enacted by the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, but not otherwise, Contractor does hereby assure the County that Contractor will appropriately safeguard protected health information made available to or obtained by Contractor.
- 5.2 In implementation of such assurance and without limiting the obligations of Contractor otherwise set forth in this Agreement or imposed by applicable law, Contractor hereby agrees to comply with applicable requirements of law relating to protected health information and with respect to any task or other activity Contractor performs on behalf of the County.
- 5.3 At termination of this Agreement, Contractor shall return or destroy all protected health information received from County that Contractor still maintains in any form and retain no copies of such information.

- 5.4 The Parties agree that this Agreement may be amended from time to time if and to the extent required by the provisions of 42 U.S.C. 1171 et seq. enacted by the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, in order to assure that this Agreement remains consistent therewith.

6. TERM OF AGREEMENT

- 6.1 The Work included in this Contract shall for the annual requirements beginning November 1, 2002 through October 31, 2005.
- 6.2 Contract shall be renewable for one (1) additional three (3) year period *by mutual consent of the parties* (November 1, 2005 through October 31, 2008)
- 6.3 The County shall notify the Contractor of any determination to extend this Agreement no less than thirty (30) days prior to the beginning of the relevant optional year.

7. TERMINATION OF THE AGREEMENT

- 7.1 The Agreement may be terminated by the following:
- 7.1.1 Termination for Convenience. The County reserves the right to terminate any part of or the entire contract that may result from this bid without cause and at any time provided the Contractor is given thirty (30) calendar days written notice.
- 7.1.1.1 The Contractor may cancel said agreement upon ninety days written notice (to allow sufficient time for the County to secure another provider).
- 7.1.2 Termination for Cause. The County may terminate the Contract if the Contractor:
- 7.1.2.1 Refuses or fails to supply enough properly skilled workers or proper equipment to satisfactorily provide complete needs assessment as requested.
- 7.1.2.2 Disregards laws, ordinances, or regulations or orders of a public authority having jurisdiction over the Contract.
- 7.1.2.3 Otherwise commits a substantial breach of any provision of the Contract Document.
- 7.2 The County and the Contractor shall have the following obligations upon termination:
- 7.2.1 The County must notify the Contractor in writing. Upon receipt of notice, the Contractor must cease all work and proceed to close out all operations.

- 7.2.2 The Contractor must deliver all reports and estimates entirely or partially completed and all unused materials supplied by the County.
- 7.2.3 The Contractor must appraise the work completed and submit the appraisal to the County for evaluation.
 - 7.2.3.1 In the event of termination for any reason, Contractor shall make available to the County or its designate a full accounting of the status of all county accounts.
- 7.2.4 The County will pay the Contractor a fee for the percentage of the work actually completed as payment in full for services rendered to the date of termination.
 - 7.2.4.1 The fee is a percentage of the Contractor's fee as described in the offer (**see Exhibit B**).
 - 7.2.4.2 The County will make final payment within 60 days of contractor's delivery and County's acceptance of all completed or partially completed work.

8. INSURANCE REQUIREMENTS

- 8.1 Prior to commencement of any services, the Contractor shall provide the County with the requested insurance certificates identifying this Agreement by name and number (**see Exhibit C**). All required insurance policies, except Workers' Compensation and Professional Liability, must name the County as Additional Insured with regard to this project.
 - 8.1.1 The Contractor must give the County thirty days written notice before cancelling any policy.
 - 8.1.2 The Contractor's failure to furnish evidence of insurance may be considered a breach of contract.
 - 8.1.3 The Contractor must require any subcontractors to provide Worker's Compensation and Employer's Liability with at least as much coverage as that provided by the Contractor.

9. NON-TRANSFERABLE RESPONSIBILITIES

- 9.1 No assumption or takeover of any of Contractor's duties, responsibilities, or obligations, or performance of same by any entity other than Contractor whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration, for any reason whatsoever, may occur without County's express prior written approval.
- 9.2 If any such assumption, takeover, or unauthorized performance does occur without such prior written approval, this Agreement will become void for failure of its essential purpose. Such act is therefore a material breach of this Agreement, upon which County may pursue any lawful remedy.

10. ASSIGNMENT AND SUBCONTRACTING

- 10.1 Contractor shall not assign its rights, delegate its duties or subcontract any performance of our Agreement without the express prior written consent of County. Any assignment, delegation or subcontract without such express prior written consent shall be null and void and shall constitute a material breach of this Agreement, upon which County may immediately terminate the Agreement in accordance with the provisions stated in "termination", herein.

11. TIME IS OF THE ESSENCE

- 11.1 Time is of the Essence. If any anticipated or actual delays arise, Contractor shall immediately notify County. Regardless of notice if deliveries are not made at the time agreed upon, County may, at its sole discretion, terminate this Agreement and proceed pursuant to "termination" as stated herein.

12. INDEPENDENT CONTRACTOR STATUS

- 12.1 This Agreement is by and between County and Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between County and Contractor. The employees and agents of one party are not the employees or agents of the other party for any purpose whatsoever.
- 12.2 Contractor understands and agrees that all persons performing work pursuant to this Agreement are, for purposes of worker's compensation liability, solely employees of Contractor and not employees of County. Contractor shall be solely liable and responsible for furnishing any and all workers' compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of Contractor hereunder.
- 12.3 The employees and agents of each party, shall while on the premises of the other party, comply with all rules and regulations of the premises, including, but not limited to, security and safety requirements.

13. INDEMNIFICATION

- 13.1 The Contractor shall indemnify and hold harmless the County, its members, its officers and employees from and against all claims, damages, losses, and expenses, including, but not limited to attorney's fees arising out of or resulting from the performance of the contract, provided that any such claim, damage, loss

or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property other than goods, materials and equipment furnished under this contract) including the loss of use resulting therefrom; is caused in whole or part by any negligent act or omission of the proposer, any subcontractor, or anyone directly or indirectly employed by any one of them or anyone for whose acts made by any of them may be liable, regardless of whether or not it is caused by a party indemnified hereunder.

- 13.2 In any and all claims against the County or any of its members, officers or employees by an employee of the proposer, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation under paragraph 14.1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the proposer or any subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

14. LICENSES AND BONDS

- 14.1 The Contractor shall obtain whatever insurance, licenses and bonds and fulfill whatever other requirements as are required in order to perform this Agreement, and shall provide evidence of such insurance, licenses and bonds to the County.

15. GOVERNING LAWS

- 15.1 The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this proposal and any agreement reached as a result of this process.

16. EQUAL EMPLOYMENT OPPORTUNITY

- 16.1 In connection with the carrying out of this project, the contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age or marital status.
- 16.2 The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.

These Contract Agreements, together with the other Contract Documents herein above mentioned, form this Contract, and the are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and the County hereby agree that all the terms and conditions of this Contract shall by these presents be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the contractor and the County do hereby execute this contract.

EXECUTION BY LANCASTER COUNTY, NEBRASKA

CONTRACT APPROVED AS TO FORM:

COUNTY OF LANCASTER, NEBRASKA

David W. Johnson
for Lancaster County Attorney

Chairperson, Board of Commissioners 8/20/02

EXECUTION BY CONTRACTOR

IF A CORPORATION:

ATTEST:

Secretary (SEAL)

Pharmacia
Name of Corporation

12737 Q St Omaha NE
Address

By: *[Signature]*
Duly Authorized Official

V.P.O
Legal Title of Official